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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,088	04/20/2006	Gerardus Leonardus Mathieu Teeuwen	Q93076	4609
23373	7590	02/18/2009	EXAMINER	
SUGHRUE MION, PLLC			MUKKAMALA, SANDEEP	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			1794	
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			02/18/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/567,088	TEEUWEN, GERARDUS LEONARDUS MATHIEU	
	<b>Examiner</b>	<b>Art Unit</b>	
	SANDEEP MUKKAMALA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
  - 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/3/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION*****Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, drawn to Edible product.

Group II, claim(s) 6-8, drawn to Baking tin.

Group III, claim(s) 9-11, drawn to Method for production of edible product.

2. The inventions listed as Groups I - III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the common technical feature in all groups is a bread bowl. This element cannot be a special technical feature under PCT Rule 13.2 because the element is shown in the prior art. US 5601012 teaches the apparatus for baking bread bowls and method of use thereof as claimed in claims 1-11 where the bread bowl has a central cavity. Salads or soups can be served in such bread bowls. Therefore since the limitations of the present claims fail to define a contribution over the prior art, they fail to constitute a special technical feature and therefore there is a lack of unity between the claims.

3. During a telephone conversation with Brian Hannon on 11/17/2008 a provisional election was made without traverse to prosecute the invention of I, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b).

Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the

restriction requirement is withdrawn by the examiner before the patent issues.

See MPEP § 804.01.

### ***Specification***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Baking Tin, Edible Baked Product and Method for the Preparation Thereof.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated

that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation edible material, and the claim also recites bread & rice which is the narrower statement of the range/limitation.

5. Regarding claim 1-5, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2 & 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Peleg (4841112).

8. Peleg teaches an edible product consisting of dough (bread) which is baked (abstract) having a crusty surface (Col.4 line 28 & 62). The edible product further comprising top, bottom, and periphery and one of the sides of the surface having an undulating shape (see fig. 2, 2A & 5, Col. 4 line 43, Col. 5 line 20) that has cavity for holding foodstuff (Col.4 line 48 & 54).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rettey et al. (US 2003/0044493) in view of Peleg (4841112) further in view of Ellner (US 5601012).

Rettey discloses an edible product, comprises manifold enclosing internal void having specified radius and an internal volume. Rettey also discloses the edible

product as 'a bread bowl or boule comprises a spherical edible shell' (Abstract).

Rettey also discloses that the bread bowl can be used for filling other liquid food such as a soup or stew (0031) in the cavity. Rettey also discloses the surface area has a crust-like layer (0014, 0032) after baking (abstract).

Rettey doesn't appear to explicitly disclose one of the sides of the surface having an undulating shape. However Peleg discloses one of the sides of the surface having an undulating shape (see fig. 2, 2A & 5, Col. 4 line 43, Col. 5 line 20).

Rettey and Peleg are analogous art because they are from the same field of endeavor, baking dough with an internal central cavity for filling of foodstuff. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teaching of Rettey and Peleg before him or her, to modify the bread bowl of Rettey to include Peleg's surface having undulating shape. The motivation for doing so would have been to reduce the browning while increasing the heating, spacing may be employed between the sheets resting upon upper dough surface (the undulating surface). The spacing of the sheet from the crust is for the purpose of allowing more microwave energy from around the sheet to pass directly through the crust or upper dough surface into the filler material (Col. 10 line 9 & 13).

The boundary walls of internal cavity in a bread bowl intrinsically possess smooth walls.

Regarding claim 4, Rettey doesn't appear to explicitly disclose that the central cavity tapers outwards the opening. However, Ellner discloses a bread bowl baker with a concavo-convex body with a central cavity wherein the cavity tapers outward the opening (See Fig. 1C # 20, 2C # 20, 3C #20). Rettey and Ellner are analogous art because they are from the same field of endeavor, bread bowl with an internal central cavity for filling of foodstuff. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teaching of Rettey and Ellner before him or her, to modify the bread bowl of Rettey to include Ellner's cavity that tapers outwards the opening. The motivation for doing so would have been that the bread bowls are of uniform shape that is resistant to tilting and rolling (abstract, Col.1 line 61).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANDEEP MUKKAMALA whose telephone number is (571)270-7043. The examiner can normally be reached on Mon - Thurs 8:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SANDEEP MUKKAMALA/  
Examiner, Art Unit 1794

/Callie E. Shosho/  
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